

REMARKS/ARGUMENTS

Claims 1 and 3-24 are pending in the Application. Claim 2 has been cancelled. Claims 1 and 3-24 are rejected as set forth herein. More specifically, Claims 1, 3-24 are rejected under 35 USC §112 as failing to comply with the written description requirement. The Examiner has stated that there is no support in the disclosure for the terms for “retaining a drinking straw” “retention” of the straw, “the opening have a diameter no greater than about 0.3125 inches”, “the drinking straw having an outer diameter substantially no greater than said substantially circular opening”, and “substantially centrally disposed circular opening defined by score line having a first diameter no greater than about an external diameter of said drinking straw”.

The Applicant respectfully traverses the Examiner’s rejections pursuant to 35 USC §112, and respectfully points out that the disclosure on page 12 lines 11-17 specifically states that “the diameter of the drinking straw 28 is substantially equivalent to the diameter of the small opening 6, and the drinking straw corrugations are engaged to an edge of the small opening 6 to prevent inadvertent removal.” Further, original Claim 20 states “wherein when said drinking straw is inserted into said centrally disposed opening, said drinking straw is restricted from being removed therefrom” See p. 19, lines 12-13. Furthermore, with regard to the diameter of the drinking straw, the Examiner is respectfully requested to review page 7 line 15, wherein the disclosure states that the small opening has “a diameter of between about 0.1865 inches to 0.3125 inches”. Accordingly, the Applicant respectfully submits that there is sufficient disclosure under 35 USC §112 for support of the pending claims as currently amended.

Claims 1, 4, 7-10 and 12 are rejected under 35 USC §103(a) as being unpatentable over the Japanese patent to Aomatsu (JP 11-49209). Claims 1, 4, 6-12, 14, 15, 17 and 18 are rejected under 35 USC §103(a) as being unpatentable over the Japanese Patent to Tashiro et al. (JP 2000-226029) in view of Aomatsu. Claims 3 and 5 are rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claim 1 above and further in view of U.S. Patent No. 4,184,605 to Hanson. Claims 13, 16, and 19 are rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claims 1 and 14, and further in view of U.S. Patent No. 4,923,083 to Forbes. Claims 20, 22 and 23 are rejected under 35 USC §103(a) as being unpatentable over Tashiro in view of Aomatsu. Claim 21 is rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claim 20 above, and further in view of U.S. Patent No. 4,184,605 to Hanson. Claim 24 is rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claim 20 above, and further in view of U.S. Patent No. 3,438,578 to Peterson et al. Claims 1, 4 and 7-12 are rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,819,973 to Traub, Sr., et al. in view of U.S. Patent No. 5,772,561 to Biondich et al. Claims 3 and 5 are rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claim 1 above and further in view of Hanson. Claim 13 is rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claims 1 and 14 above, and further in view of Forbes. Claims 20, 22 and 23 are rejected under 35 USC §103(a) as being unpatentable over Traub in view of Biondich et al. Claim 21 is rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claim 20 above and further in view of Hanson. Finally, Claims 24 is rejected under 35 USC §103(a) as being unpatentable over the prior art as applied to Claim 20 above and further in view of Peterson.

The Applicants' attorney would like to thank Examiner Hylton for the phone interview conducted on April 7, 2005, wherein the January 24, 2005 Office Action was discussed in view of the pending claims and the cited prior art. More specifically, the Tashiro (JP2000-226029) and Aomatsu (JP 11-49209) references were discussed, as well as support for the pending claims which the Applicant respectfully submitted was provided in the detailed description. Further discussion was held regarding additional claim amendments, and specifically identifying that the vent opening is positioned in substantially the same horizontal plane as the small opening to distinguish the present invention from the Aomatsu reference. Based on the interview and the distinctions in the prior art, Applicants' have respectfully amended the claims to place the application in condition for allowance.

More specifically, the Applicants' invention as disclosed in the specification and the drawings is related to a metallic beverage end closure which is adapted for interconnection to the neck of a container body, and is not comprised of plastic materials or designed for use with plastic twist opening bottles as disclosed in the prior art reference of Aomatsu. Furthermore, the Applicants' invention is directed to a metallic central panel which has a selectively opening pull tab which creates a substantially circular aperture with a dimension which is substantially equivalent to that of a drinking straw. When inserted into the substantially circular aperture, the drinking straw is engaged to the aperture to prevent inadvertent removal and the straw from floating within the container, thus making it difficult to use by small children or the elderly. Support for this claim language may be found in the specification on page 12, lines 12-15. Further positioned adjacent the substantially circular opening is a small vent opening which allows the introduction of air into the

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beverage container when the drinking straw is being used. The vent opening is located on substantially the same horizontal plane as the circular opening.

The prior art cited by the Examiner does not disclose either alone or in combination the invention as provided in the amended claims. More specifically, with regard to the Japanese reference to Aomatsu, which the Examiner has cited as providing a small vent opening adjacent to the circular opening, the Applicant respectfully traverses the Examiner's rejection since Aomatsu teaches a bottle cap or a plastic PET bottle cap which has a "vent" positioned on the upper portion of the plastic material to reduce the effective material thickness and provide the venting of a pressurized gas through a small hole when the pull tab is pulled. Contrary to Aomatsu, the Applicants' invention teaches a vent opening that is positioned substantially adjacent a circular opening and in substantially the same horizontal plane to provide the intake of air into the container while the drinking straw is being used. With regard to the Japanese reference to Tashiro et al., the Examiner has cited Tashiro stating it teaches a can closure having a small opening for receiving a straw, the small opening "need be only of a size adequate for inserting a straw and having a maximum length of 10 mm and allowing venting of the can while the straw is positioned therein." With respect to the retention of the straw, there is no teaching in Tashiro that shows that the straw is retained or engaged to the circular opening, and that the straw is retained to prevent inadvertent removal and thus be substantially spill proof.

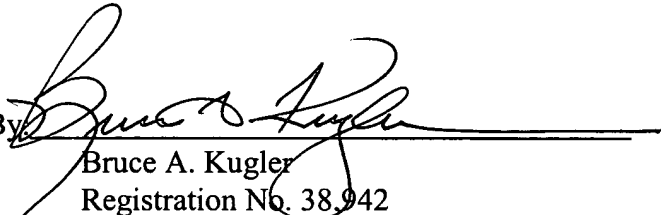
To establish a prima facie case of obviousness, the prior art references must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success musts both be found in the prior art, and not based on Applicant's

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disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991). None of the cited references teach either alone or in combination a substantially spill-proof metallic end closure and straw combination with venting features as provided in the amended claims. Based on the amended claims provided herein, Applicants respectfully submit that the application is now in condition for allowance and a Notice of Allowance and Fees Due is respectfully requested at the Examiner's earliest convenience. If the Examiner would like to discuss the pending claims and/or arguments presented herein in greater detail, the Examiner is encouraged to contact the undersigned attorney at the Examiner's earliest convenience.

Respectfully submitted,

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Date: April 25, 2005